SUPREME COURT, U. S.

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No. 181

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1964

HENRY J. THOMAS, JAMES FARMER, JOHN LEE COPELAND, ERNEST PATTON, JR., GRADY H. DONALD, PETER ACKERBERG, JAMES LUTHER BEVEL, PAULINE EDYTHE KNIGHT, CHARLES DAVID MYERS, CAROLYN YVONNE REED, JOSEPH JOHN McDONALD, RAYMOND RANDOLPH, JR., ALEXANDER ANDERSON, LESTER G. McKINNIE, WILLIAM E. HARBOUR, ZEV AELONY, MARVIN ALLEN DAVIDOV, CLAIRE O'CONNOR, DAVID KERR MORTON, KATHERINE A. PLEUNE, ROBERT FILNER, ELIZABETH S. ADLER, SANDRA NIXON, TERRY SUSAN PERLMAN, EDWARD J. BROMBERG, LESTRA ALENE PETERSON, THOMAS VAN ROLAND, JOAN FRANCES PLEUNE AND GRANT HARLAN MUSE, JR. ..... Petitioners

vs.

STATE OF MISSISSIPPI ..... Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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STATEMENT IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

Respondent, before answering Petitioners' reasons for granting the Writ as set out on page 32 of their Petition for Writ of Certiorari, feels that it is necessary to point out several discrepancies contained in the Statement (Petition, p. 7).

While it is true that each Petitioner was tried separately, no motion was filed with the Trial Court for consolidation of any of the cases prior to trial. After

trial, there is no procedure known to Mississippi practice where an appellate court can consolidate cases on appeal. Had the motion been made prior to trial, the Defendants arrested at the same time and place would have had to be tried together or the trial court would have been in error. Petitioners are in error when they state that the State of Mississippi "required a separate trial" (Petition, p. 9, n. 8). They are also in error when they say all were convicted (see affivadit of Circuit Clerk of Hinds County, Mississippi, appended hereto as Appendix I). Further, Petitioners fail to inform this Court that all those convicted were convicted in jury trials.

The statement of Petitioners that the witness Captain of Police Ray "had numerous police officers on the scene for the purpose of arresting them and a patrol wagon parked outside to carry Petitioners off to jail" (Petition, p. 10) is contained in none of the thirty (30) transcripts of the trials of Petitioners and exists only in the minds of Petitioners' brief writers.

Petitioners complain at length about the cash bonds which were posted by various organizations such as the Congress of Racial Equality, National Association for the Advancement of Colored People and others. They state that no surety company in Mississippi would handle their appeal and appearance bond business (Petition, p. 9, n. 8). Surety companies usually are highly skeptical of transient clients and, since these Petitioners were all from without the State of Mississippi, it is nothing out of the ordinary for a surety company to refuse such business without the posting of one hundred percent collateral. Of course, Petitioners fail to mention why they chose to post full collateral with the State of Mississippi rather than a private company. Also, they fail to point out that, not in one instance, did they attempt to follow

the usual procedure of getting two landowners to post a property bond as allowed under Mississippi law. Section 1175, Mississippi Code of 1942, as amended.

As concerns the group arrested on May 24, 1961, the witness Shoemaker did not make the statements ascribed to him (Petition, p. 13) on pages 541, 544, 545 and 546 of the Thomas record. These are statements of the witness Ray. However, the witness Shoemaker did make the following statements:

"Q. Now how many of these people were there in there that were not police officers or people that you didn't know?

A. Thirty-five or forty.

Q. All right sir. Did you talk to any of these?

A. Some of them, yes.

Q. Were you able to form an opinion, based upon the conversations you had with these people that were in the station, as to how they felt about the arrival ot this Defendant?

A. Yes.

Q. And the people with him. And what is that opinion?

A. They had no intention of greeting him with any glad hand.

Q. Well, just what do you mean by that?

A. They came to do him harm, generally."

(R. Thomas 510).

On cross-examination of the witness Shoemaker, the record reflects:

"Q. Did you see any citizen of Jackson start toward these freedom riders in any way when they came in, run toward them, walk hurriedly toward them?

A. There was a crowd of people gathered around them quickly when they came in sight, and the police had them to move back."

(R. Thomas 519).

As concerns the arrests made on May 28, 1961, (Petition, p. 16), Captain Ray may have admitted that no overt act was committed but Respondent would point out that this is immaterial as these Petitioners were not charged with an *attempt* but with the actual commission of a breach of the peace.

OPPOSITION TO REASONS FOR GRANTING WRIT

I.

THE CONVICTIONS OF PETITIONERS DO NOT OFFEND DUE PROCESS. Respondents do not deny the right of Petitioners to use interstate transportation facilities in the City of Jackson, Mississippi. Petitioners do not deny the holding of this Court in *Boynton v. Virginia*, 364 US 454, and the other cases cited by Petitioners (Petition, p. 32). However, Respondent asserts that when a person breaches the peace by conduct which will incite violence, the State may exercise its police power by ordering such a person to move out of that vicinity. The witness Ray recites in all of the thirty (30) cases at bar that he was of the opinion that breach of the peace was about to occur. These Petitioners were arrested under a valid statute with ample proof being presented to a jury of each of Petitioners' guilt.

II.

SECTION 2087.5, MISSISSIPPI CODE OF 1942, AS AMENDED, RECITED IN FULL IN THE PETITION FILED HEREIN (PETITION, P. 4), IS NOT SO VAGUE, UNCERTAIN AND INDEFINITE AS TO CONFLICT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. A criminal statute must be sufficiently definite to give notice of required conduct to one who would avoid its penalties and to guide the judge in its application and the lawyer in defending one charged with its violation. *Boyce Motor Lines v. United States*, 342 US 337, *People v. Galamison* (1964), 250 N.Y.S. 2d 325.

The decision of *Edwards v. South Carolina*, 372 US does not apply here. In that case, there was no evidence that any of the crowd of onlookers actually caused or threatened any trouble. Here, in every arrest, there was the element of potential violence from the crowds gathered around the Petitioners. In truth, the facts here more closely parallel those in *Feiner v. New York*, 340 US 315.

Section 2087.5, Mississippi Code of 1942, as amended, adequately gives notice of the required conduct to one who would avoid its penalties. The opinion of Justice Gillespie in *Farmer v. Mississippi* (Petition, Appendix, p. 38A) sets out the constituent elements of the offense charged. All of the elements were proved in each trial. The enforcing officer has adequate guides in situations when he determines that violence is about to erupt to order persons to move on.

III.

THESE CONVICTIONS DO NOT CONSTITUTE STATE ENFORCEMENT OF RACIAL SEGREGATION IN INTERSTATE FACILITIES CONTRARY

TO THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Certainly Respondent cannot deny the existance of the statutes requiring racial segregation as recited by Petitioners (Petition, p. 41). However, Respondent denies that any of these statutes were enforced against any of Petitioners. These Petitioners were arrested under the provisions of Section 2087.5, Mississippi Code of 1942, which is almost identical with a New York State statute. New York Penal Law, Consol. Laws, C.49, Section 722. Many states which have not been concerned with segregation statutes on their books have similar laws. The power granted a policeman on a beat to require citizens to move out of a given area when the officer has a valid reason for doing so is a basic concept in the matter of preserving the peace of a community. This statute was upheld in *People v. Galamison,* supra, when the New York Supreme Court felt that "the conduct of the defendants was likely to occasion a breach of the peace."

IV.

THESE CONVICTIONS DO NOT CONFLICT WITH FIRST AMENDMENT GUARANTEES OF FREE SPEECH, ASSEMBLY AND ASSOCIATION.

Again, Respondent asserts that *Edwards v. South Carolina,* 377 US 229, has no application here. Respondent would show that there was ample evidence in each arrest of impending violence.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be denied.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi

JOHN A. TRAVIS
Special Assistant Attorney General

ROBERT G. NICHOLS, JR.
Special Assistant Attorney General

CERTIFICATE

I, Robert G. Nichols, Jr., Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have mailed a true copy of the foregoing Response to Petition for Writ of Certiorari to the Supreme Court of Mississippi to the following counsel of record for the Petitioners, via United States mails, postage prepaid, to-wit:

Jack Greenberg
James M. Nabrit, III
Derrick A. Bell, Jr.
10 Columbus Circle
New York, New York 10019

Jack Young
Carsie Hall
115½ North Farish Street
Jackson, Mississippi

R. Jess Brown
125½ North Farish Street
Jackson, Mississippi

This the 2nd day of November, 1964.

Special Assistant Attorney General

APPENDIX

STATE OF MISSISSIPPI
COUNTY OF HINDS

This day personally appeared before me, the undersigned authority in and for the state and county aforesaid, duly commissioned by law to administer oaths and take acknowledgments, Robert Lilly, who, being by me first duly sworn, states on his oath:

1. That, affiant is a Deputy Clerk of the County Court of the First Judicial District of Hinds County, Mississippi;

2. That, affiant is fully familiar with the records of the Office of the Circuit Clerk of Hinds County, Mississippi, the Clerk of same serving also as the Clerk of the County Court of Hinds County, Mississippi;

3. That, affiant has searched the dockets of the County Court of the First Judicial District of Hinds County, Mississippi and finds that the following cases, each defendant being charged therein with a violation of Section 2087.5, Mississippi Code of 1942, as amended, and each defendant being a part of the group of cases commonly known as "Freedom Riders", and that the dockets of said cases reflect the following disposition by the said Court:

Docket No.	*Defendant*	*Disposition*
12,655	James Thomas Carey	5-1-62 - Motion for directed verdict sustained;
12,723	Mark Lane	3-30-62 - Motion for directed verdict sustained;

Docket No.	*Defendant*	*Disposition*
12,733	Orville Bert Luster	5-1-62 - Directed verdict for defendant;
12,777	Kenneth Martin Shilman	12-14-61 - Directed verdict for defendant;
12,782	Felix Jacques Singer	12-23-62 - Directed verdict for defendant;
12,788	Percy E. Sutton	3-30-62 - Defendant dismissed on request of Pros. Atty.;
12,796	Daniel Ray Thompson	12-28-61 - Directed verdict for defendant;
12,806	O'Neal Vance	1-5-62 - Directed verdict for defendant;
12,815	Ralph Edward Washington	1-23-62 - Directed verdict for defendant;
12,841	Ray A. Cooper	5-21-62 - nolle prosequi;
12,850	Percy Lee Johnson	3-27-62 - Directed verdict for defendant;
12,851	James Wilson Jones	3-22-62 - Directed verdict for defendant;

Docket No.	*Defendant*	*Disposition*
12,907	Morton Bruce Slater	4-24-62 - Directed verdict for defendant;
12,928	Gilbert S. Avery, III	4-9-62 - Directed verdict for defendant;
12,929	James Pleasant Breeden	4-9-62 - Directed verdict for defendant;
12,930	Myron B. Bloy, Jr.	5-21-62 - nolle prosequi;
12,931	John Cracker, Jr.	5-21-62 - nolle prosequi;
12,932	John Marvin Evans	5-21-62 - nolle prosequi;
12,933	James Walker Evans	5-21-62 - nolle prosequi;
12,934	Quinland Reeves Gordon	5-21-62 - nolle prosequi;
12,935	John B. Morris	5-21-62 - nolle prosequi;
12,936	Robert Laughlin Pierson	5-21-62 - nolle prosequi;
12,937	Geoffrey Sedgewick Simpson	5-21-62 - nolle prosequi;
12,938	William Andrew Wendt	5-21-62 - nolle prosequi;
12,939	Vernon P. Woodward	5-21-62 - nolle prosequi;

Docket No.	*Defendant*	*Disposition*
12,940	Merrill Orne Young	5-21-62 - nolle prosequi;
12,941	James Garrard Jones	5-22-62 - Defendant not guilty - discharged;
12,942	Robert P. Taylor	5-21-62 - nolle prosequi;
13,165	Lavert H. Taylor	5-21-62 - nolle prosequi;
13,166	Charles Andre Jones	5-21-62 - nolle prosequi;
13,167	Glenda Faye Jackson	5-21-62 - nolle prosequi;

4. Further affiant saith not.

/s/ ROBERT LILLY

SWORN TO AND SUBSCRIBED BEFORE ME this 26 day of October, 1964.

H. T. ASHFORD, JR., Circuit Clerk
By /s/ R. D. Thompson, D.C.

(SEAL)

MY COMM. EX:_____